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The Current State of the Law Curriculum

Roger C. Cramton

During the 1970s a deep gulf arose between the practicing bar and legal educators over the selection and preparation of law students for careers in law practice. The most visible critic was Chief Justice Burger, whose speeches tended to suggest the following syllogism: the legal profession has a serious problem of competency; the primary source of these problems is legal education; ergo, law schools must do a better job of preparing their graduates for law practice.[1] Since legal educators were viewed as resistant to change, some urged the bench and the bar to impose course requirements or other external regulation on law schools either directly or as a condition for eligibility to the bar.

The current president of the American Bar Association has aptly summarized the subsequent dialogue:

> The bar increasingly questioned whether law students were selected by appropriate criteria, whether they emerged from law schools ready to practice law, and whether legal educators were either equipped or willing to teach those skills needed by the great majority of law students who intend to practice law. Educators responded that the role of the law schools was to train law students in the theories and substance of the law and "how to think like lawyers" and was not to function as trade schools. Practitioners urged accreditation standards that required clinical and practical experience, while academicians argued in reply that such mandates would violate the principles of academic freedom.[2]

This exchange led to much pointing of fingers between the bar and legal educators, with the latter defensive and divided. Fortunately, this era of finger pointing and polarized views appears to have passed. Chief Justice Burger has had some good things to say about current trends in legal education and has shifted his attention to other pressing problems, such as the poor state of the criminal justice system. And in other respects

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1. For a discussion of this syllogism, see Roger C. Cramton, Lawyer Competence and the Law Schools, 4 U. Ark. Little Rock L. J. 1 (1981); E. Gordon Gee & Donald W. Jackson, Bridging the Gap: Legal Education and Lawyer Competency, 4 B.Y.U. L. Rev. 695, 892–926 (1977).
2. David R. Brink, Legal Education for Competence—A Shared Responsibility, 59 Wash. U. L. Q. 591, 593 (1981).

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the atmosphere has improved. As David Brink says, "The bar and educators are now working together, exploring innovative ways in selection and training for better lawyering."[3] A "quiet revolution" in the law schools has advanced clinical legal education, instruction in lawyering skills, and involvement of practitioners in such instruction. Brink credits the report of the ABA Task Force which I headed, sometimes referred to as the Cramton Report,[4] as contributing to these developments by "underscor[ing] the principle that law schools should provide additional opportunities for writing, negotiating, counseling, trial and appellate advocacy, and other professional skills. . . ."[5]

References to the Cramton Report at this and recent Association meetings are a source of both gratification and alarm: gratification at seeing my name in such prominent display (like Groucho Marx, I would rather be libeled than ignored); and alarm because of the positions that are attributed to me and the odd assortment of alleged friends and enemies I discover I have acquired.

Twelve of the Task Force's recommendations are directed to the law schools.[6] I think these recommendations, and the report accompanying them, are essentially sound. I commend them to you in the hope they will be given serious attention by law-school curriculum committees and faculties.

I

Let me begin with several introductory observations. First, the words "training" and "teaching," much used in discussions of lawyer competency, carry implications that should be made explicit. "Training" implies a technocratic and instrumental approach to education—a narrow vocational approach. And "teaching" implies that it is the teacher or the message that is important, not the learning. These terms might be appropriate if we were preparing technocrats for technical roles rather than preparing lawyer-professionals for the diffuse and complex roles they bear in our society.

I have a strong preference for "learning" as the appropriate term for the process we are discussing. The central aspect of learning is that the initiative and energy must come from the learner; our task as teachers is to organize, inspire, and facilitate the learner in acquiring new knowledge, skills, and potentialities.

3. *Id.* at 594.

4. ABA Legal Education and Admissions to the Bar Section Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools (Chicago: ABA Press, 1979) [hereinafter cited as Cramton Report].

5. Brink, *supra* note 2, at 594.

6. Cramton Report, *supra* note 4, at 3–5.

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The ancient Eastern proverb "When the student is ready, the teacher will appear" correctly emphasizes that motivation is critical to learning. Education is a complex and difficult phenomenon because it is largely dependent upon nurturing intangible qualities in the learner: intellectual curiosity, acquisition of a sense of mastery of ideas, the joy of applying ideas to the solution of ever more complex problems, and the like. Education must not be treated as if it were an obstacle course, a boot camp, but ideally should engage the whole person of the learner.

My second observation is that ninety-six weeks of law-school instruction spread out over three or four calendar years will not package a human being—even a very talented one—with the basic equipment necessary to enable the graduate immediately or subsequently to fulfill all the roles he will be called on to play. Every law graduate must now expect to continue his education throughout a lifetime, by self-learning in practical settings, through CLE programs operated by bar groups, and, increasingly in the future, through new forms of law-school instruction designed for various types of practitioners.

The implications of this observation are obvious. On the one hand, it is unrealistic to expect the law schools to turn out a fully finished product capable of handling any legal task. On the other hand, the law schools cannot avoid the responsibility that comes with being one of the gatekeepers to the profession: the obligation to provide a basic grounding in the knowledge, skills, and attitudes which are fundamental to most activities undertaken by lawyers. The critical importance of self-learning suggests that law schools should give more explicit attention to ways in which this capacity can be exercised and expanded during the law-school years, forming habits and skills that will carry over to a lifetime of practice.

Preparing individuals for the legal profession is a complicated task because the profession is so diverse and changeable. Law-school graduates travel many paths after graduation. Although there are elements that unify them, legal careers are highly varied. A review of the current activities of a Cornell class of several decades ago, for example, reveals a few exotic choices, such as the one made by a graduate who went into gold mining and another who embarked on the manufacture of mattresses. But there is also considerable diversity among those who practice law: a trial lawyer specializing in complex product-liability cases; a general-practice lawyer engaged in routine wills and real-estate transactions; a patent lawyer on the legal staff of a large chemical company; a lobbyist representing the timber industry in Washington; and the usual mix of those practicing corporate law in large firms, those in government work, and a few who have become judges, law professors, or politicians. Lawyers, it is clear, do a great many things.

Moreover, our society changes very quickly and lawyers are always on the cutting edge of those developments. During a single, forty-year career

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dramatic transformations in law and legal institutions will occur. This mutability is one reason why it is a mistake to rigidify the law curriculum by mandating particular courses for admission to the bar. This regimentation not only turns an intellectual experience into a boot camp, but the prescription itself soon becomes obsolete. Requiring courses in a number of specific subjects, as Indiana and South Carolina have done,[7] flies in the face of Whitehead's reminder that "information doesn't keep any better than fish."

My third observation is that law schools are and should be different even though we often talk about them as if they were all the same. A few harsh facts of life bear repeating. There is a pecking order in the law-school world just as there is in the legal profession, whether we like it or not, and law schools ranged along that hierarchical structure perform quite different functions, preparing quite different people for different legal and other careers. Although all law schools have common elements, their differences are enormous.

A conspiracy of silence tends to suppress any frank talk about these familiar differences. They go far beyond modest qualitative differences in the credentials of students and faculty, the size of budgets, and the quality of libraries and physical facilities. The vast majority of law teachers have the imprimatur of only a handful of law schools;[8] most creative legal scholarship comes from a fairly limited number of law schools; and the placement of law graduates is primarily determined by the name of the school that granted the degree. Recent ABF studies of legal education and the legal profession document these differences.[9]

Heinz and Laumann, for example, characterize the legal profession as falling into two hemispheres of dissimilar groups of attorneys: one group, the most prestigious, provides legal services to business organizations and the wealthy; the other, less prestigious hemisphere provides legal services to individual Americans in innumerable routine transactions and cases involving real-estate transactions, family matters, wills, personal injury, worker's compensation, and the like.[10] Most of the lawyers in the first hemisphere were educated in national or regional law schools; nearly all the lawyers in the latter hemisphere were prepared in local and regional law schools.[11] Each hemisphere is nearly equal in number and their

7. Rule 13 of the Indiana Supreme Court is discussed by Gee & Jackson, *supra* note 1, at 905-09; S.C. Supreme Court R. 5A.

8. Donna Fossum, Law Professors: A Profile of the Teaching Branch of the Legal Professor, 1980 A.B.F. Research J. 501.

9. See John P. Heinz & Edward O. Laumann, Chicago Lawyers: The Professions of the Bar (New York: Russell Sage Foundation, forthcoming); Frances K. Zemans and Victor G. Rosenblum, The Making of a Public Profession (Chicago: American Bar Foundation, 1981).

10. See Edward O. Laumann & John P. Heinz, The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies, 76 Mich. L. Rev. 1111, 1119-37 (1978).

11. *Id.* at 1131-32.

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members have very little to do with one another except as some trial lawyers and some organized bar activities bridge the gap.[12]

Just as law schools sort out applicants for admission primarily on the basis of LSAT and GPA, with the LSAT score being the dominant factor,[13] legal employers sort out law graduates by screening them through a filter that starts with the applicant's law school, then considers the academic record at that school, and only at that point considers the personal qualities of the individual. These initial choices turn out to be permanent career decisions for most people, since the character of one's initial practice experiences and the value of its specialized nature (whether it is in worker's compensation or securities regulation) tend to control subsequent choices. Thus there is very little movement between the two hemispheres: a law graduate who starts with a corporate law firm will end his career in corporate law practice; and one who begins with matrimonial disputes is exceedingly likely to end there.[14] Because there is a class bias in student selection and self-selection at the educational institutions that serve the two hemispheres, with more working-class and disadvantaged persons attending the local law schools, access to the profession for these groups tends to be concentrated in the hemisphere that serves people rather than the one serving wealth.[15]

I recite these harsh realities not to endorse them but because they reinforce the point that legal education is and must be diverse. Indeed, a strong case can be made that it should be more diverse than it is. The law-school world is tyrannized by a paucity of educational models. Although many schools are quite different in role and function, their stated aspirations are limited to the models embodied by a handful of elite schools—whether or not these models have any application to the differing situation of the local and regional law schools that produce over two-thirds of American lawyers. Law schools producing "people lawyers" should have a different curriculum, in content and method, than those feeding the corporate law firms. A sound introduction to the basic lawyer skills of application, such as counseling, interviewing, fact investigation, negotiation, and trial advocacy, is desirable in all law schools; but its necessity is most apparent in the local law schools that produce lawyers who are unlikely to receive good apprenticeship experiences and must learn on their own.

The irony is that the development of innovative teaching materials rests largely on the faculty of the national law schools, who have the resources, limited teaching load, and creative capacity to lead the way; yet these

12. *Id.* at 1132–37. Heinz & Laumann, *supra* note 9, chs. 3, 10.

13. The tables supplied by most law schools to provide potential applicants with an indication of the chances of admission confirm these statements. See AALS-LSAC, Prelaw Handbook 81-82 (1981).

14. Heinz & Laumann, *supra* note 9, ch. 6.

15. *Id.* at ch. 10.

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schools have the least incentive to develop new and better ways of teaching lawyer skills since their graduates, unlike those of the local law schools, generally receive a good on-the-job apprenticeship in some lawyering skills in the major law firms. Since the national law schools are also sprinkled with teachers who are threatened by anything new, disdainful of the practice of law, and inclined to be intolerant of any research other than the manipulation of doctrine or abstract theory, progress has been slow.

Changes in the perspectives and attitudes of teachers at the "people-oriented" law schools also inhibit needed emphasis upon lawyering skills. A national market for law teachers has displaced the older model of a Mr. Chips teacher in the local or regional law school, who devotes his career to nurturing students in that environment, working with the local bar, and participating in local law reform. Fortunately there are still a number of these people around, but their number is declining. They are being replaced by new recruits who may be more talented intellectually but who have been seduced by the bitch goddess Success. This latter group seeks national recognition. They can get it only by bringing themselves to the attention of schools higher up in the pecking order. One generally does that by publishing doctrinal articles and not by developing innovative materials for teaching lawyer skills or inspiring students at a local law school.

Nevertheless—and this is my fourth observation—progress has been sure and steady. The self-flagellation that occurs at meetings such as this one should not obscure the enormous good health of American legal education at the present time. We are at the end of an unprecedented period of growth, expansion, and improvement of American legal education. Individually and collectively, American law schools have more teachers, a livelier intellectual discourse, better students, and better libraries and physical facilities than ever before. Although it is arguable whether the top schools are any better than they were twenty-five years ago, it is incontestable that three-fourths of American law schools are enormously improved over this same period. And, at all law schools, the curriculum, faculty, and students are more diverse than they were a generation ago. We all have clinical programs, interdisciplinary courses, and a substantial representation of women and minorities among law students and faculty. We've come a long, long way.

The celebration of our achievements, however, produces a dull talk. So the balance of my remarks will be directed at the remaining warts in the law curriculum and some immodest suggestions for their excision during the 1980s. What is wrong with the law curriculum? How can it be improved? What obstacles must be overcome?

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II

First, the law curriculum is deficient in structure. Good education engages student motivation and curiosity with basic concepts and then challenges the student by forcing him to use basic knowledge and concepts in solving more difficult learning tasks. The sense of mastery acquired in early stages motivates the student to surmount progressively more imposing challenges. Except for the fact that one fundamental cognitive skill—case analysis—and one fundamental applied skill—legal research—come early in the law-school experience, the law curriculum has no perceptible structure, sequence, or organization. Indeed, the inherent organization that it does have, reinforcing a subtle intellectual hierarchy of values in which certain "hard" analytical abilities are more highly valued than "softer" aspects of value-inquiry or interpersonal relations, is an implicit rather than explicit message.[16] (This implicit structure, of course, reinforces the pecking order of the profession which places a higher value on the supposedly more intellectual tasks of a securities issuance than it does on counseling a troubled human being.)

Frank Michelman's paper ably discusses the fragmentation of the law curriculum in a smorgasbord of elective courses; the absence of underlying organizational theory; the randomness of student experiences in the sequence and progression of courses; and the inattention to overall result: has the law graduate acquired the basic knowledge, skills, and attitudes that any decent lawyer should be expected to have?[17]

The ignorance of faculty members about the content of the curriculum to which students are exposed at their own schools is hard to overestimate. In terms of content, no one knows whether the law of standing, for example, has been omitted entirely or taught once, twice, three times, or even more. In terms of method, we know very little about how our colleagues teach and what the effect of their efforts is on students as a whole. As Michelman has said, in matters curricular, the whole should be more than the sum of the parts.[18] In the American law school, despite the brilliance of individual teachers and the quality of many individual courses, it is usually less.

The problem lies in the abandonment of collective responsibility by law faculties for the curriculum as a whole.[19] The Lone Ranger theory of legal education, almost universally observed in the United States, involves

16. For a discussion of the implicit value structure of legal education, see Roger C. Cramton, The Ordinary Religion of the Law School Classroom, 29 J. Legal Educ. 247 (1978).

17. Frank I. Michelman, The Parts and the Whole: Non-Euclidean Curricular Geometry, 32 J. Legal Educ. 352 (1982).

18. *Id.* at 354.

19. See Cramton Report, *supra* note 4, at 25–26 and Recommendation 7, p. 4.

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an implicit compact (some would call it a conspiracy) among faculty members: "You do your thing in your courses as long as I am permitted to do my thing in mine." This abandonment of collective responsibility for the curriculum and deference to individual faculty autonomy are far more extreme than in other parts of the university, especially in comparison to the other professional schools.

Frank Michelman has also discussed the direction in which we should move—toward a restoration of balance in which the faculty gives more attention to the goals of the curriculum and the manner in which its various parts meet those goals.[20] And he has also suggested the arguments and emotions that will meet any call for a more structured curriculum.

Second, the law curriculum is not sufficiently diverse. It is too much of one piece in method, pace, and content: the dissection of appellate cases, two or three per hour, at that intermediate level of abstraction that focuses on rules and process. In this uniformity lies, in part, the cause of the boredom and alienation of many second- and third-year students, who desert the law school in droves for extracurricular activities, poker, or part-time employment.

The case-class discussions that begin in the first term with discipline and rigor sometimes degenerate in later terms into loose dialogues following what I call the "avuncular Socratic method." The teacher asks a question about a particular case. There is a prolonged silence. He then refines the question, suggesting the direction in which he is moving. A bold student, departing from the passive mold characterizing most of the class, makes a half-hearted pass at the second question. Then the teacher, his conscience satisfied, gives a five-minute lecture in which he gives his own answer to the question. The process then repeats itself with a new question. The avuncular Socratic method is not the hard-nosed Socratic method of the first term; nor is it the more explicit lecture or discussion which one frequently finds in the law-school classroom. It is neither fish nor fowl, neither rigorous Socratic technique nor careful lecture, just poor teaching.

One important element in creating student passivity, in addition to repetition in method and content, is the front-end loading of the law curriculum and its effect on student incentives. The incentive and reward mechanism of law school turns almost entirely on first-year performance. The evaluation of a student's worth in the first-year essay examinations, stressing an ability to perform under time pressure certain forms of legal diagnosis and analysis, is repeated in examination after examination in subsequent years. It is not surprising that performance remains much the same, especially since this type of examination gives little weight to hard work, acquisition of information, or other abilities. The internal correla-

20. Michelman, *supra* note 17, at 353–354.

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tions between LSAT, first-year grades, and the Multistate Bar Examination are, understandably, very high: all three measure the same set of lawyer abilities.[21]

But the front-end loading of the law curriculum goes beyond its limitation to one set of lawyer competencies. First-year grades control the distribution of goodies: honors, law review, job placement, and, because of the importance placed on these matters by the law-school culture, even the student's sense of personal worth. Since the system rewards only a few, punishes the rest, and is perceived as largely unresponsive to the degree of effort devoted to study, it is not surprising that clerking in a law office, combined with a passive and limited response to the upperclass curriculum, is a frequent choice. The wonder is that so many second- and third-year law students work as hard as they do.

The diversity of the law curriculum can be enhanced by building in varied content and method as a more structured curriculum moves through planned stages. Diversity is currently found here and there in little pockets of the curriculum: exposure to social issues or empirical questions in an interdisciplinary course, an introduction to the lawyer's role in the course on professional responsibility and clinical offerings, an overarching perspective in a course devoted to legal theory, comparative law, or legal history. But this theoretical and speciality curriculum is now provided to only a handful of students; and it comes very late in the law-school experience, after basic attitudes have formed.

I do not share the common notion that the first-year curriculum is a great success and that the problems of the law curriculum would be solved if only those of us who teach in the second and third year would do a better job. The intensity of the initial experience and the front-end loading of law school lead students to conclude that the focus, method, and content of the first year is normative and that any subsequent departure from it is a deviation. This does not mean that departures are not possible (in a sense students hunger for them), but it does mean that they require a special effort and superior teaching to enlist the energies of law students. The burden of proof has to be carried by any curricular approach that departs from the first-year norm in method, content, or level of abstraction.

My own proposals for revising the incentive and reward mechanism of law school are radical. They have not appealed to my colleagues at Cornell. In my view, students should be evaluated on a more varied and frequent basis than the traditional, end-of-course, essay examination. Opportunities to reward students who excell, for example, in oral or

21. See Alfred B. Carlson & Charles E. Werts, Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results (Report No. LSAC-73-2), *in* Law School Admissions Council, Reports of LSAC Sponsored Research, Vol. III: 1975-77, at 211 (Princeton, N.J.: Law School Admissions Council, 1977).

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written communication, reflective problem-solving, skills of counseling, or other competencies relevant to good lawyering should be sought out rather than ignored.

The use of a total pass-fail system in the first year is also desirable, with such honors as Coif being determined solely by performance during the last two years of law school.[22] Students would have a longer period to adjust to legal reasoning and the law-school atmosphere and an increased incentive to apply themselves in the upperclass years. But, the objectors counter, how would legal employers and the law review select their personnel? The defense of the first-year pecking order based on the convenience of these groups does not impress me, once it is conceded—as I think it must be—that the excitement and intensity of the first year would insure ample student enthusiasm and effort. The conversion of the American law school from an educational enterprise into an organization performing a convenient grading, sorting, and labeling function for legal employers is closer at hand than we realize. Abandonment of first-year grades would help arrest the trend in that direction.

As for the law review, a strong case can be made for law faculties resuming the editorship of our learned journals, as in all other scholarly disciplines. Many of our law reviews have become so concerned with fair selection of their editors—ensuring that this honor, carrying such tangible employment rewards, goes to the right people—that the educational functions of the law review suffer. Today's abler and more intellectually homogeneous law student should participate in writing and editing a good law review under faculty supervision in seminars or individual research, with the honor of law-review membership flowing from actual publication, rather than from some mode of initial selection, whether it be the older reliance on first-year grades or the trendier mode of student-run writing competitions.

Third, the law curriculum is neither sufficiently theoretical nor sufficiently practical. The sameness of the intensive curriculum of the first year and the bread-and-butter curriculum that dominates the second and third years has another aspect: the absence of focused attention on either theory or practice. The concentration on one dispute-resolution process (i.e., third-party adjudication from the vantage point of the appellate court) is not premised on any underlying theory of the nature of law or the work of lawyers. Indeed, the customary assumption is that the process and inquiry is value-neutral and that explicit inquiry into values is unnecessary. In fact, the "ordinary religion of the law-school classroom," which I have

22. Those who are shocked by such an unfamiliar proposal may be reassured to learn that this approach is followed in legal education throughout most of the civilized world. In England, for example, examinations at the end of the first year merely qualify a student to continue in the academic program; evaluation of students for honors or class rank is entirely dependent upon performance in the second and third years.

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described in an earlier article,[23] expresses and nurtures certain value-positions, but they are not explicitly stated or defended. The quest for justice, or some attempt to define various conceptions of justice, does not lie at the head or heart of law school but in appendages tacked on as upperclass, elective offerings. Similarly, the quest for general theories that organize and explain legal phenomena is undergoing a lively renaissance in legal scholarship, but as yet it has only a marginal relationship to the basic law curriculum.[24]

The absence of theory, the "jurisprudential void,"[25] however, is not due to the law curriculum's devotion to the practical arts of lawyering. The truth is that law school proceeds most of the time at the same intermediate level of abstraction, characterized by that of the normal appellate decision.[26] Facts are present but are taken for granted; they need not be discovered or manipulated. Rules and doctrine are the primary focus—the level of abstraction is neither broadly theoretical, probing the foundations of legal theory that underlie a doctrine or rule, nor practical, offering assistance to the lawyer who must utilize doctrine to choose a strategy, draft a pleading or document, object to the admission of evidence, or frame an instruction for a jury.[27]

The basic curriculum should include more departures from this middle road, both in the direction of the high road of legal theory (what is the nature of law? what are the limits on its efficacy? what do we mean by justice and its fulfillment in the real world?) and in terms of putting doctrine to work in solving customary legal tasks. This shift would also give greater emphasis to planning and preventive law activities of lawyering, as distinct from after-the-fact litigation which is now the almost exclusive focus of law school. Theory and practice are not opposed but illuminate and inform each other.

The addition of courses focusing on lawyering skills will broaden and deepen the law curriculum only if those courses are infused with a theoretical and critical perspective. If they merely reinforce the existing vocational orientation of the traditional skills courses—those focusing on the analysis and manipulation of cases and doctrine—they will have failed. Courses in interviewing, negotiation, counseling, and advocacy will acquire a permanent place in the basic curriculum of the university law school because they are founded on insightful, theoretical explanations of

23. See Cramton, *supra* note 16.

24. See the interesting symposium on Legal Scholarship: Its Nature and Purposes, 90 Yale L. J. 955 et. seq. (1981).

25. See John J. Bonsignore, Law School Involvement in Undergraduate Legal Studies, 32 J. Legal Educ. 53 (1982).

26. See Robert E. Keeton, Teaching and Testing for Competence in Law Schools, 40 Md. L. Rev. 203 (1981).

27. *Id.* at 210.

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why lawyers and officials behave as they do and because they produce important empirical findings that illuminate how lawyers, clients, and officials behave and interact or lead to valuable normative statements of how they should behave.

Greater insight into the nature of the legal profession and the proper role of the lawyer may be expected as highly respected legal scholars interest themselves in the what, why, how, and should of the legal profession. A new body of knowledge is beginning to emerge, and it will provide the basis for a critical reassessment of the profession and its role in American society. The lawyer or judge cannot disclaim responsibility for his actions by asserting that he was only following or applying the law or doing what was customary. A concern with value-inquiry—a quest for justice—is being reinjected into our theory of law. Now we must reintroduce it to the law curriculum.

My fourth criticism of the law curriculum is that it is not always sufficiently demanding. Students are allowed, especially in the second and third years, to get away with poor or no preparation, inadequate class participation, terrible examination papers, and shoddy written work. Perhaps the elective curriculum and the misuse of student evaluations of teacher performance have led to an analog of Gresham's law in which cheap teaching drives out good teaching. The pressure for high student enrollments and the desire to be popular may sometimes lead to easy grading or relaxed standards of performance and make it more difficult for tough, demanding teachers to make their way. Really exciting teachers, however demanding, do not encounter these problems; but there may be many of us in the middle ranges of performance who have difficulty competing for students' attentions with the debased currency, part-time work, and student preoccupation with placement that characterize the second and third years.

In this area, as in the structure and organization of the curriculum, peer pressure is essential and collective faculty action may be desirable to maintain standards and provide incentives for rigorous teaching.

III

My message thus far is that improvements in the law curriculum are desirable and possible. It remains to provide a brief glimpse at the obstacles that stand in the way of change. They lie in familiar places: limited resources, student resistance, external pressures from bench and bar, and, finally and most seriously, in ourselves as law faculty.

Scarce resources are an inevitable fact of life. After a time of relative plenty, the current era of economic depression in higher education looms large in our consciousness. Law schools, despite our good physical facilities and high salaries, have always been the poor relations of the university set. We have always been dependent upon gate receipts (or, in the

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case of the public universities, state subsidies). Langdell's most lasting imprint on American legal education is not the case method, which was quickly put to uses other than those he envisioned, but the large classes, poor student-faculty ratios, and favorable balance of trade with the central university—aspects that continue to characterize legal education today.

The counsel of despair suggests that needed improvements in legal education will be labor intensive and expensive, that existing faculty cannot be retrained to solve current problems, and hence that desirable changes must be rejected on grounds of funding. This "give-in" philosophy is unacceptable. So times are tough. That means that enthusiastic faculty and energetic deans will have to work harder to raise the necessary funds from tuition-paying students, alumni, state legislators, foundations, and others. The experience of the past suggests that funds can be raised if you have a good program to sell.

Similarly, the omnipresence of student culture inhibits some forms of desirable change. Students are herd-like, and the herd may be distracted by a short-run consumerism that is not in their long-term interest or that of anyone else. The fact that many students view law school as an obstacle course on the way to an initial law job creates practical and political problems for curriculum change. But these difficulties can be surmounted with patience, seduction, and, if necessary, brute force. The merits of seduction should not be overlooked: often the best way to deal with student resistance to a desirable change, such as a theoretical approach to professional responsibility, is to pretend that it is bread and butter and then seduce them with jurisprudence, history, or economics when their guard is down.

The external pressures are also constant and wearing. Bar examiners are either looking for the nuts and bolts of current law in a particular jurisdiction or they are rerunning the LSAT once again in the form of the MBE or both of the above. Legal employers are looking for easy symbols of competitive success, such as first-year grades and law-review status; they press the school to do a better job of sorting and labeling students for their hiring process. As I have already indicated, I would declare war on some of these attitudes and seek the help of those genuinely interested in legal education to see us through the inevitable backlash.

Finally, however, we arrive at the real sticking point—ourselves. Like other professional groups, we are jealous of our prerogatives, comfortable with the way things are, and intensely conservative about matters as central to our selfhood as what and how we teach. Moreover, our special strengths and weaknesses are perpetuated by the hiring process, which tends to filter out people who do not have the same accomplishments and interests, have not attended the same schools and shared the same experiences. We are threatened by discussions of values, by messy human emotions, by personal involvement with students or clients, and we place

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these matters out of bounds for classroom discussion. We are tied to familiar teaching materials and methods and increasingly share the same national perspectives on how a teacher-scholar should spend his or her time.

I do not suggest that law schools, in an effort to conquer the new horizons of legal theory and law practice, should sacrifice what only they can do well—provide the basic introduction to analytical skills and the research function that contributes new knowledge and insights about law to society. Such an unfortunate tradeoff is unnecessary for two reasons. First, reducing the slack and redundancy of the present law curriculum will allow some reallocation, and make better use, of existing faculty manpower. Second, the development of legal theory and practical applications devoted to lawyer activities and behavior will attract student interest, faculty energies, and become self-generating. Perhaps interdisciplinary approaches will be generally integrated into the law curriculum once they are directed to the problems of lawyer behavior that should lie at the heart of the standard curriculum.

My friend Terry Sandalow has expressed fears that an abrupt change in the content and focus of legal education may have unforeseen consequences on the character of the university law school.[28] As law faculties add individuals with different interests and competencies, internal tensions may have adverse effects on faculty unity and collegiality. Similarly, if the scholars on these faculties are conscripted for legal writing and intensive teaching of other skills, their scholarship may suffer or universities may encounter difficulties in attracting and retaining the best minds. Freedom of scholarly inquiry rather than routine drill in writing exercises, he argues, is what attracts creative intellects to the university law school. I agree that university law faculties are a precious and fragile organism and that rapid changes in personnel and focus may have undesirable consequences. But the intense conservatism of the law-school world is sufficient protection against overly rapid change! Sandalow's concern for faculty cohesion strikes me as a two-sided argument. A genuine community of scholars is one thing, but a comfortable social relationship among like-minded peers may rest in a desire to avoid the stress of dealing with strong new personalities and deserving new intellectual claims.[29]

The possible drain on time available for scholarly work is a more substantial concern. Law teachers are engaged in many routine, repetitive, and onerous activities at present. Grading examinations is the most extreme example, but the introductory case drill in first-year courses is

28. Oral remarks at program of Section on Teaching Methods, AALS annual meeting January 6, 1981, San Antonio, Texas.

29. See Francis A. Allen, Humanistic Legal Education: The Quiet Crisis, 25 L. Quadrangle Notes 25, 31 (Spring 1981).

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also routine and repetitive, even though its lively theatrical quality makes it more acceptable. We tolerate these activities because they are essential and valuable elements of the learning process. New burdens, of course, cannot be heaped upon busy teachers without sacrifice of time for study, reflection, and research. But work with students' lawyering skills can be substituted in part for the routine burdens we now carry. And in teaching lawyer skills one experiences the joy of seeing students grow in capacity and skill—a satisfaction rarely encountered in reading blue books.

In the final analysis one's conclusion is affected by his assessment of the seriousness of our deficiencies and the prospects of improvement through the avenues of change that are likely to be available. One American attitude is the gung-ho approach—putting the hand to the wheel in the hope that desirable results may emerge. Another approach, also deeply American in character, is reflected in the comment of an English lord in the 1840s, who had heard more than he could bear about the need for reform:

> Reform, Sir, reform!
> I've heard enough about reform. Things are bad enough as they are.

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